



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

March 3, 2011

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Michael Miltenberg**
Tax Registry No. 896558
105th Precinct Detective Squad
Disciplinary Case Nos. 85690/09 & 2010-1037

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on October 26, 2010, and was charged with the following:

DISCIPLINARY CASE NO. 85690/09

1. Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, between January 28, 2008 and October 1, 2008, on fifteen (15) occasions, did wrongfully fail and neglect to properly maintain Department records, to wit: said Lieutenant omitted to sign in present for duty and end of tour on the command roll call as required.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

2. Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, between January 28, 2008 and November 14, 2008, on twenty-nine (29) occasions, did wrongfully fail and neglect to properly maintain Department records, to wit: said Lieutenant omitted to sign out end of tour on the command roll call as required.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

3. Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, between March 31, 2008 and December 22, 2008, on nine (9) occasions, did wrongfully fail and neglect to properly maintain Department records, to wit: said Lieutenant omitted to sign in present for duty on the command roll call as required.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

4. Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, on or about August 19, 2008, did wrongfully allow unauthorized persons to be transported in an unmarked Department vehicle #329, to wit: 2006 Ford Crown Victoria, without permission or authority to do so.

P.G. 202-22, Page 1, Paragraph 5

**RADIO MOTOR PATROL OPERATOR
DUTIES AND RESPONSIBILITIES**

**LIEUTENANT MICHAEL MILTENBERG
DISCIPLINARY CASE NOS. 85690/09 & 2010-1037**

5 Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad between January 7, 2008 and December 23, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit said Lieutenant failed to submit UF-28's for lost time on thirteen (13) occasions for a total of thirty (30) hours and forty (40) minutes

P.G. 203-10, Page 1, Paragraph 5
P.G. 203-05, Page 1, Paragraph 2 and 4

**PROHIBITED CONDUCT
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2010-1037

1 Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, while on duty, on or about March 9, 2009, while within the confines of the 105th Precinct, did abuse his authority as a member of the New York City Police Department in that said Lieutenant did fail to conduct a proper investigation prior to authorizing the wrongful entry and search of a premises to arrest a subject named in an arrest warrant, to wit said Lieutenant did not have reasonable cause to believe that said subject was inside said premises prior to authorizing the entry and search of said premises

P.G. 208-42, Page 1, Paragraph 3

ARREST ON A WARRANT

In a Memorandum dated February 7, 2011, Assistant Deputy Commissioner Vinal accepted the Respondent's Pleading Guilty to Specification Nos 1, 2, 3, 4, found the Respondent Not Guilty of Specification No 5 in Disciplinary Case No 85690/09, and found the Respondent Guilty of the sole Specification in Disciplinary Case No 2010-1037 Having read the Memorandum and analyzed the facts of these matters, I approve the findings, but disapprove the recommended penalty of 30 Vacation days, plus One-Year Dismissal Probation

Respondent Miltenberg's inappropriate conduct and poor judgment regarding these matters are not excused However, in light of his otherwise praiseworthy service and performance history with the Department, along with very commendable comments offered of him by his Commanding Officer, I believe that a period of dismissal probation is not necessary Therefore, the penalty in this matter will consist only of the forfeiture of 30 (thirty) Vacation days



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

February 7, 2011

MEMORANDUM FOR: Police Commissioner

RE: Lieutenant Michael Miltenberg
Tax Registry No. 896558
105 Precinct Detective Squad
Disciplinary Case Nos. 85690/09 & 2010-1037

The above-named member of the Department appeared before me on
October 26, 2010, and December 2, 2010,¹ charged with the following:

Disciplinary Case No. 85690/09

1. Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, between January 28, 2008 and October 1, 2008, on fifteen (15) occasions, did wrongfully fail and neglect to properly maintain Department records, to wit: said Lieutenant omitted to sign in present for duty and end of tour on the command roll call as required.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, between January 28, 2008 and November 14, 2008, on twenty-nine (29) occasions, did wrongfully fail and neglect to properly maintain Department records, to wit: said Lieutenant omitted to sign out end of tour on the command roll call as required.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

3. Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, between March 31, 2008 and December 22, 2008, on nine (9) occasions, did wrongfully fail and neglect to properly maintain Department records, to wit: said Lieutenant omitted to sign in present for duty on the command roll call as required.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

¹ The trial record was held open until December 17, 2010, for the receipt of an edited transcript.

4 Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, on or about August 19, 2008, did wrongfully allow unauthorized persons to be transported in an unmarked Department vehicle #329, to wit, 2006 Ford Crown Victoria, without permission or authority to do so

P G 202-22, Page 1, Paragraph 5 – RADIO MOTOR PATROL OPERATOR
DUTIES AND RESPONSIBILITIES

5 Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, between January 7, 2008 and December 23, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit, said Lieutenant failed to submit UF-28's for lost time on thirteen (13) occasions for a total of thirty (30) hours and forty (40) minutes

P G 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
P G 203-05, Page 1, Paragraph 2 and 4 – GENERAL REGULATIONS

Disciplinary Case No 2010-1037

1 Said Lieutenant Michael Miltenberg, while assigned to the 105th Precinct Detective Squad, while on-duty, on or about March 9, 2009, while within the confines of the 105th Precinct, did abuse his authority as a member of the New York City Police Department in that said Lieutenant did fail to conduct a proper investigation prior to authorizing the wrongful entry and search of a premises to arrest a subject named in an arrest warrant, to wit said Lieutenant did not have reasonable cause to believe that said subject was inside said premises prior to authorizing the entry and search of said premises

P G 208-42, Page 1, Paragraph 3 – ARREST ON A WARRANT

The Department was represented by Penny Bluford-Garrett, Esq , Department Advocate's Office, and the Respondent was represented by James Moschella, Esq

The Respondent, through his counsel, entered pleas of Guilty to certain of the charges in these two cases and pleas of Not Guilty to the remaining charges A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

DECISION

Disciplinary Case No 85690/09

The Respondent, having pleaded Guilty as charged to Specification Nos 1 through 4, is found Guilty of Specification Nos 1 through 4 The Respondent is found Not Guilty of Specification No 5

Disciplinary Case No 2010-1037

The Respondent is found Guilty

SUMMARY OF EVIDENCE PRESENTED

Introduction to Disciplinary Case No 2010-1037

It is not disputed that the Respondent, assigned as Commanding Officer (CO) of the 105 Precinct Detective Squad (PDS), was on duty on March 9, 2009, and that at about 8 00 p m , he responded to [REDACTED] [REDACTED] to supervise officers assigned to the 105 PDS

Detective Christopher Alden and Sergeant James Hanrahan were among the members assigned to the 105 PDS who were present at [REDACTED] [REDACTED]

The Department's Case

The Department called Richard Burrowes, Sonia Thomson, Detective Christopher Alden, Sergeant James Hanrahan, and Sergeant Anthony Bocola as witnesses and offered the transcript of a tape-recorded interview of the Respondent conducted at the Civilian Complaint Review Board (CCRB) on November 2, 2009

Richard Burrowes

Richard Burrowes (Richard), a 20-year old who is a student at Pratt Institute, described the interior of his parent's residence at [REDACTED]. He explained that when you enter through the front door, there are two stairways, the stairway on the right leads to the basement and the stairway on the left leads up to two doors, one door leads into the second floor apartment, and the other door leads to the ground floor which consists of the living room and the kitchen. A hallway leads to three rooms and a bathroom.

On March 9, 2009, he was living on the ground floor with his mother and father. His sister lived upstairs in the second apartment with friends. His parents rented the downstairs basement at that time to a man named [REDACTED]. [REDACTED] moved out a few months after March, 2009. He knew [REDACTED] through his uncle [REDACTED] who was not living in the house in 2009, but who had lived in the house about ten years earlier.

He recalled that on March 9, 2009, his friend [REDACTED] came over to the house and then left and said he was going to come back. About 15 minutes later, at 8:20 p.m., he heard knocking on a window while he was in the living room sitting in front of his computer. Because the doorbell does not work, he assumed it was [REDACTED] letting him know that he had returned. When he opened the front door, he saw a flash of light and he heard someone say "Police!" Someone pushed the front door open and told him to lie down on the floor. A police officer, who was holding a gun in his hand, rushed through the front door and ran past him without asking if he could come in the house. The police officer ran up the stairway and then ran down into the kitchen.

Richard remained on the floor for about 20 minutes until another officer picked him up off the floor, put him up against a wall and searched him. He was then told to sit down. He watched as they searched throughout the house. He saw four men dressed in suits and trench coats enter and go downstairs. Two more men entered from outside and ran downstairs to the basement.

The officers did not say why they had entered. He was not shown a warrant. He was shown a photo of a man who the officers said was "[REDACTED]". They asked him whether he had ever seen "[REDACTED]". He did not recognize the man in the photo. He was told that "[REDACTED]" had "put down" "[REDACTED]" as his permanent address and that is why they were searching for him there. He was not asked about "[REDACTED]". Another officer came in, shut the door to Richard's apartment, and told him that he wanted to talk to him about what they had found downstairs. This officer told him that they had found "weed and cocaine" in the basement. The officers did not arrest anyone.

On cross-examination, he confirmed that when the officers came into the house, they did not show him a warrant or mention a warrant or pretend that they had a warrant and that they were there to arrest someone on a warrant. The police had never before come to his home to search the residence. He agreed this was a very unusual event and he described it as "frightening."

He agreed that while he was in the living room waiting for his friend "[REDACTED]" to come back, because he was playing music fairly loudly, it was possible that the officers could have been knocking on the front door and that he did not hear their knocks. He agreed that anyone at the front door who rang the doorbell would not realize that the doorbell was broken and did not ring. He agreed that when he opened the front door, he

expected to see [REDACTED] and that if it had been [REDACTED] he would have allowed him to enter. He denied that he had allowed the police officers to enter and he asserted that they had "pushed the door like into me and then they told me to get down on the ground." He agreed that when he opened the door, because he was expecting to see [REDACTED] he had stepped to the side and that he wound up behind the door. He agreed that after the officers who entered first were already inside the house, a second group of officers came into the residence, after some time had passed, and then a third group came into the residence from outside. He agreed that the last officer who came in was very tall, that he was very calm and that he seemed to be in charge. He agreed that none of the officers who had already entered had their guns out at that point and that by that point people who had been inside the house been allowed to leave.

On redirect examination, he confirmed that the officers who first entered the house did not ask him if they could come in and that he never gave them consent to enter. He does not have a lawsuit pending with regard to this incident.

Sonia Thomson

Thomson testified that she has resided in a two-family house she owns at [REDACTED] [REDACTED], New York, for 31 years and that she retired from her former job with a catering company at JFK Airport and is on disability.

She recalled that on March 9, 2009, at about 8:00 p.m., she was inside her bedroom with the door closed, sitting on her bed packing a suitcase. Because her husband was on vacation, the only other person who was inside her area of the residence was her 19-year-old son Richard Burrowes. She heard a kicking sound at her bedroom

door The door opened and "a white man" in civilian clothing held gun in her face and told her, "Don't move " He asked her, "Where are the two guys that run in here?" She responded, "Which two guys? Nobody runs in here It's only me and my son here " She saw two other men go into her son's bedroom She realized that "they were cops" because she saw that they were wearing bulletproof vests The officer told her, "Lift the bed up " She explained to him that she could not lift the bed up because she has a [REDACTED] problem and [REDACTED] The officer told her, "Get up " He then tossed the bed up in the air and dropped it back down He then went into her closet and moved clothing and other items around in the closet She asked the officer, "Where's my son?" She was told that he was okay She asked the officer, "Can I see him?" He told her, "No "

After the officers left her bedroom and her son's bedroom and went back down the stairs, she walked out and saw her son sitting on the top step of the stairs She then saw [REDACTED], her daughter's boyfriend who lives upstairs with her daughter, coming downstairs The officers told him to go back upstairs Her daughter then ran downstairs The officers told her daughter to go back upstairs and to let them come up When she refused, the officers told her daughter that if she did not let them go upstairs, they would call the SWAT team and the SWAT team would search the house, so her daughter let them come upstairs The officers showed Thomson a photocopy of a photo of a man's face and told her, "This person's name is [REDACTED], do you know this person?" She told them that she had never seen that person The officers did not show her an arrest warrant or a search warrant or any paper and they did not ask her for permission to come into her house or for permission to search her home

Thomson has a brother named [REDACTED] who lived in her house about ten years ago. She has not seen her brother for about five years. [REDACTED], the man who rented her basement, has a nephew named [REDACTED], but Thomson does not know him. [REDACTED]'s basement apartment has a separate entrance on the side of the house. The officers did not ask her about her brother [REDACTED].

On cross-examination, Thomson confirmed that her house is a private, legal, detached two-family house with one front door entrance. Her daughter lives upstairs in the second floor apartment. There are no markings on the second door indicating that it is a private apartment. Thomson confirmed that [REDACTED] let the officers enter the basement portion of the house that is his rental apartment. There are no markings on the basement door indicating that it is a private apartment. Thomson confirmed that her only knowledge of how the officers actually got in through the front door of her house is what her son told her, because she was not present when they entered through the front door of her house. She was inside her bedroom. When the officer kicked her bedroom door open, the door did not come off the hinges and the door was not damaged. Thomson described herself as very scared when the officer displayed a gun in her face and told her, "Don't move." The officer said he was looking for "two guys," so she asked him, "Which two guys?" When this officer asked her to move the clothes aside in her bedroom closet so that he could see if someone was hiding there, she told him that she could not do that because she was ill and that he should do it himself because she has a severe [REDACTED]. She was "so scared" that "the whole night I didn't sleep."

When she was asked whether she had ever told the officers that they could not search her house, she responded, "I didn't have the time for what to tell them at the point

in time when somebody approach you like that What would I say? I couldn't even think after they finished in my apartment, they rushed downstairs and then when I go to even talk to my son they wouldn't allow me, so how was I to even know what to say At that time I didn't know what to say " The police were inside her house for about 20 minutes She was not sure how long because she "was so frightened " They never showed her any piece of paper that they claimed was an arrest warrant for her brother

██████████ She does not know who was inside ██████████'s apartment

When she was asked whether she had complained to the officers that night that they had violated her rights, she answered, "I didn't talk to nobody because they just left after they finished They didn't stick around for me to ask no questions They just left " She called CCRB and made an appointment She told the CCRB investigator that the officers had threatened her daughter that if she did not allow them to search the upstairs apartment that they would call the SWAT team When she was asked whether she had believed that she would have been shot if she did not consent to the search, she answered, "Yes, I believe it because if somebody has a gun in my face, I believe they can do anything they want to do "

On redirect examination, she confirmed that she does not have a lawsuit pending with regard to this incident

Detective Christopher Alden

Detective Alden recalled that when he arrived at ██████████ on March 9, 2009, he took a position on the side of the house toward the rear of the house He was not present with the officers who were at the front door at the time when the

officers initially gained entrance to the residence. When he entered the residence, he saw that the Respondent was already inside the residence. He confirmed that he had received a Command Discipline (CD) regarding his activity log entries.

Sergeant James Hanrahan

Sergeant Hanrahan, who was assigned as Executive Officer of 105 PDS on March 9, 2009, recalled that during the 105 PDS's investigation of [REDACTED] for numerous different crimes, a debriefing was conducted of an individual who had been arrested and who had stated that [REDACTED] who was under investigation by numerous detectives assigned to the 105 PDS for having committed numerous crimes, had been staying at

[REDACTED] A computer warrant check of that address revealed that a 1997 arrest warrant regarding a "[REDACTED]" listed him as residing at [REDACTED] [REDACTED] [Department's Exhibit (DX) 1]. When Hanrahan arrived at [REDACTED] on March 9, 2009, he took a position on the side of the house. From this position he could not see the front door of the residence at the time when officers gained entrance to the residence. He recalled that he entered the residence before the Respondent entered the residence. He confirmed that he had received a CD regarding his activity log entries.

Sergeant Bocola testified solely in regard to Specification No. 5 of Disciplinary Case No. 85690/09. Bocola testified that while he was investigating the Respondent's time records, he attempted to ascertain whether the Respondent had failed to submit Leave of Absence Reports ("UF-28s" or "28s") for lost time. He obtained from the

Leave Integrity Management System (LIMS) a computer report (DX 3) summarizing the Respondent's time records. By reviewing this record, he determined that during 2008 the Respondent had failed to submit UF-28s for lost time on 13 occasions. He cited these 13 occasions in an analysis he prepared (DX 2).

On cross-examination, he confirmed that the LIMS computer report (DX 3) was the only document he reviewed in his investigation of whether the Respondent had failed to submit UF-28s for lost time, and that his determination that during 2008 the Respondent failed to submit UF-28s for lost time on 13 occasions was based solely on his analysis (DX 2) of the LIMS computer report. He testified that he assumed that the Respondent had failed to submit UF-28s for lost time on the 13 charged occasions because the LIMS computer report (DX 3) shows that no lost time was deducted. This non-deduction of time indicates that no UF-28s for lost time on the 13 occasions charged were received by LIMS. Bocola explained that under the procedures for processing UF-28s for lost time, the 105 PDS forwards UF-28s to Detective Borough Queens (DBQ) and that DBQ was required to attach UF-28s to the Respondent's Employee Time Record (ETR) when DBQ prepared his ETR and forwarded it to LIMS.

The Department offered the transcript of an interview of the Respondent that was conducted at CCRB on November 2, 2009, regarding the March 9, 2009 search that was conducted by 105 PDS officers at [REDACTED] (DX 4).

At this interview, the Respondent stated that he and about a dozen members from the 105 PDS went to [REDACTED] on March 9, 2009, because they "were out on location capturing an arrest warrant" regarding a "[REDACTED]" who was listed

on an open arrest warrant as residing at that location. He explained that the 105 PDS had a 'case' regarding "[REDACTED]" and that was why they were searching for him there. He stated that no detective had been assigned to the investigation regarding "[REDACTED]". He stated that an individual who had been arrested by officers from the 113 Precinct had stated that [REDACTED], who was under investigation by numerous detectives assigned to the 105 PDS for having committed numerous crimes, "had been staying at that house." He was asked whether "you went to the location because of [REDACTED] or because of [REDACTED]?" He answered, "During the course of investigating the apprehension of [REDACTED], we discovered a warrant for [REDACTED]. During the course of one investigation, if I find elements of another crime, I'm obligated to investigate that crime too. That crime being that he ([REDACTED]) was a wanted individual. So both crimes were being investigated." The Respondent stated that when he entered the residence at [REDACTED] he had his firearm drawn. He could not recall whether he re-holstered his firearm after he entered.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent, who has served as CO of the 105 PDS for the past eight years, testified that on March 9, 2009, at about 8 00 p m, he personally responded to [REDACTED] to supervise officers assigned to the 105 PDS. Detective Christopher Alden and Sergeant James Hanrahan were among the members assigned to the 105 PDS.

who were present at [REDACTED] The Respondent testified that they went there "to gain possible intelligence of whether [REDACTED] was staying there or not " The 105 PDS was attempting to apprehend [REDACTED] because he was wanted for three individual shootings as well as the arson of the house of one of the witnesses in one of those shootings. Information had been developed from a person who had been arrested and debriefed in the 113 Precinct that [REDACTED] might be staying at that and several other locations. The Respondent testified that numerous detectives were assigned to the investigation of [REDACTED], about 12 officers, including himself, which was all the members of the squad at that time that were working. They had already been to two or three other locations looking for [REDACTED].

Before they went to [REDACTED] they conducted a history check of the address, and found that there was an arrest warrant for a [REDACTED] for failure to appear in Criminal Court on a criminal court summons that had been served on him. The Respondent testified that, "While we were there looking for [REDACTED] if Mr [REDACTED] was there, we would have taken him into custody to return him to court. He would have went directly to court. During that time, we would have taken the opportunity to debrief him about where [REDACTED] might be, or if [REDACTED] was staying at that house ". The Respondent testified that he did not believe that the arrest warrant for [REDACTED] authorized any nonconsensual entry into [REDACTED]. [REDACTED] The Respondent testified that it was his understanding that in order to lawfully enter [REDACTED], "that we would need consent "

The other members of the 105 PDS arrived at the location prior to his arrival. He went to the rear of the house and was not present when his detectives entered the front

door of the house. His detectives told him that [REDACTED] was not there. The Respondent testified that he recognized Richard Burrowes when he testified at this trial and that he recalled that he had spoken to Richard briefly after he entered the residence. All of his detectives had already been inside [REDACTED] from 15 minutes to a half hour before he entered the location. He never authorized his detectives to make a forced entry into the location and he did not discuss with his detectives entering the location without the consent of the occupants of the house. The Respondent testified that he believed that his detectives had "knocked on the door and were let in" to [REDACTED] [REDACTED]. He believed this because when he "got there it was calm, collective. There was no -- had it been done what the Department calls a dynamic entry, it would have been a very different situation. When I got there, like I said, it was calm and collective. The young man [Richard] who was up here was standing on the landing. He was calm. I had no reason to think that a dynamic entry took place." He explained that "a dynamic entry" was "a forced entry without consent." No one complained to him at that point in time that his detectives had made a nonconsensual entry into the apartment. The Respondent testified that the detectives who had entered the location prior to his arrival did not indicate to him how they had gotten into the house and he did not have any specific conversation with them, or with Richard, as to exactly how they had made entry into the residence. He was inside the location "less than five minutes."

With regard to his pleas of Guilty to Specifications Nos. 1 through 3, the Respondent testified that, "It was being irresponsible on my part because, you know, I should have signed in and signed out. I just didn't. I would get into the office and it would be busy and that wasn't at the time a top priority. It wasn't something that was

part of the routine inspection by the quality assurance division so it was never really brought to my attention that I wasn't doing it "

With regard to his plea of Guilty to Specification No 4, the Respondent testified that, on that single occasion, his three "step kids had been dropped off at the office for me to drive them home and they asked if they could go down and play with the lights and sirens I took them in the car, we drove around the block a couple of times with the lights and sirens on, and we came back to the command and I drove them home "

With regard to Specification No 5, the Respondent testified that, "On days that I would not complete my full tour, I would sign out in the command log and note what we called lost time After signing out in the command log, I would make the roll call change on the front of the roll call, then on the back of the roll call I would do the change, the reason for the change, and then I would put who I notified at" DBQ "of that change " The notification was sent to DBQ that he was taking lost time through "a telephone call to their wheel " On each of the 13 dates, he signed out on the roll call During 2009, he had about 250 hours of lost time His particular practice in 2008 was to submit requests for lost time by having his Police Administrative Aide (PAA), who did his secretarial work, prepare them for him and forward them to DBQ He did not notice during 2008 that 30 hours and 40 minutes had not been deducted

On cross-examination, the Respondent testified that on March 9, 2009, he went to [REDACTED], to look for [REDACTED], not to act on the arrest warrant for [REDACTED]

[REDACTED] The Respondent was confronted with the statements he made at his CCRB interview² He recalled that at his CCRB interview he was apprised of the section

² The statements he made at his CCRB interview (DX 4) are summarized above in the last section of the Department's Case

regarding providing false and misleading statements and that he had an attorney present with him. The Respondent testified that during a conversation with his CCRB interviewers prior to the tape-recorded interview, he and his attorney were told that they would "question me about [REDACTED] so I answered about [REDACTED]"

The Respondent testified that between January, 2008 and December, 2008, he never checked with his PAA to see whether or not "28s" for lost time had been actually submitted to DBQ. His PAA submitted "28s" for other members of the 105 PDS as well as him. He never looked at his pay stubs to see if the 30 hours and 40 minutes were deducted.

FINDINGS & ANALYSIS

Disciplinary Case No. 85690/09

Specifications Nos. 1 through 4

The Respondent pleaded Guilty and admitted that he wrongfully failed and neglected to properly maintain Department records in that he omitted to sign in present for duty and end of tour on the command roll call on 15 occasions between January 28, 2008 and October 1, 2008, he also omitted to sign out end of tour on the command roll call on 29 occasions between January 28, 2008 and November 14, 2008, and he also omitted to sign in present for duty on the command roll call as required on nine occasions between March 31, 2008 and December 22, 2008. The Respondent further admitted that on August 19, 2008, he wrongfully transported his three "step kids" in an unmarked Department vehicle without having received permission to do so.

The Respondent, having pleaded Guilty to the misconduct charged under Specifications Nos 1 through 4, is found Guilty

Specification No 5

It is charged that the Respondent engaged in conduct prejudicial to the good order, efficiency and discipline of the Department by failing to submit UF-28s for lost time on 13 occasions for a total of 30 hours and 40 minutes

I find the Respondent Not Guilty because the Department did not present sufficient evidence to establish that he failed to submit UF-28s for lost time on the 13 occasions charged

Sergeant Bocola testified that the LIMS computer printout (DX 3) was the only document he reviewed in his investigation of whether the Respondent had submitted UF-28s for the lost time he took on 13 occasions and that the analysis he prepared (DX 2) was based solely on information he gleaned from this LIMS computer printout

On cross-examination, Bocola candidly admitted that he assumed that the Respondent had failed to submit UF-28s for lost time on the 13 charged occasions because the LIMS computer report shows that no lost time was deducted by LIMS for the 13 occasions. This non-deduction of time indicated to Bocola that no UF-28s for lost time on the 13 occasions charged were received at LIMS

However, Bocola acknowledged that under the procedure for processing UF-28s for lost time, the 105 PDS forwards UF-28s to DBQ and that it was possible that clerical personnel at DBQ had failed to attach UF-28s they had received from the 105 PDS to the Respondent's ETR when DBQ forwarded his ETR to LIMS

The Department presented no witness from DBQ to testify that DBQ never received any UF-28s from the 105 PDS documenting the Respondent's lost time on the 13 charged occasions

Absent such testimony, there is a missing link in the paper transfer trail from the 105 PDS to LIMS. Thus, the Department did not eliminate the real possibility that whoever processed the Respondent's ETR at DBQ failed to attach the Respondent's UF-28s to his ETR when his ETR was sent to LIMS

Moreover, the Department did not refute the Respondent's contention that time records at the 105 PDU establish that he had no intent to hide the lost time he took since the fact that he had signed out before the end of his scheduled tour on all 13 occasions was documented on the 105 PDS roll calls for those 13 dates

The Respondent is found Not Guilty of Specification No. 5

Disciplinary Case No. 2010-1037

It is charged that the Respondent abused his authority by failing to conduct a proper investigation prior to authorizing the wrongful entry and search of [REDACTED] [REDACTED] on March 9, 2009, to arrest "[REDACTED]" who was named in an arrest warrant, in that he did not have reasonable cause to believe that "[REDACTED]" was inside the premises prior to authorizing the entry and search of the house at that location

I find the Respondent Guilty based on the testimony of Sonia Thomson and her son Richard Burrowes, and based on the Respondent's statements to CCRB and his trial testimony

The Testimony of Sonia Thomson and her son Richard Burrowes

I credit Richard's testimony that when he responded to knocking sounds by opening the front door because he was expecting a friend, members under the Respondent's supervision, with firearms in hand, pushed open the front door, entered the residence without requesting permission to do so, and demanded that Richard drop down onto the floor. Richard's testimony that the officers did not request his consent before racing through the front door entrance and running into rooms inside the house was supported by Thomson who testified that an officer kicked open her bedroom door, entered her bedroom while displaying a firearm, lifted up her bed, and searched her closet without asking for her consent.

Since neither Thomson nor Richard has filed a lawsuit against the Respondent or this Department regarding this incident, neither was shown to have a financial motive, or any other reason, to invent a story that officers had stormed through the front door and then searched rooms inside the residence.

Based on their credible testimony, I find that members assigned to the 105 PDS who were under the Respondent's personal supervision at the scene never requested the consent of Richard or his mother that they be allowed to enter the house or to search rooms inside the house. Rather, they forcibly entered and searched Thomson's home. I further credit Thomson's and Richard's testimony that none of the officers displayed a warrant or showed them any document.

The Respondent has offered two completely different justifications as to why he and the 105 PDS officers he was supervising had the legal right to enter and search Thomson's residence.

The Respondent's statements at his CCRB interview

When he appeared at CCRB on November 2, 2009, the Respondent acknowledged that he and his officers had forcibly entered and searched [REDACTED], on March 9, 2009. He asserted that they had the legal right to forcibly enter the residence at that address because they were there solely for the purpose of "capturing an arrest warrant" regarding a "[REDACTED]" who, in 1997, was listed in court records as residing at [REDACTED] (DX 1)

The Respondent admitted that when he entered the residence at [REDACTED] on March 9, 2009, he had his firearm drawn from his holster (DX 4 p 19) and that he could not recall whether he re-holstered his firearm at any point after he had entered (DX 4 p 20-21). When he was asked to explain why he and members under his direct supervision had forcibly entered and searched the residence at [REDACTED], he offered the fiction that the 105 PDS had a "case" regarding a "[REDACTED]" (DX 4 p 17). He asserted that he and the members of the 105 PDS "were out on location capturing an arrest warrant," and that the person they were searching for there was "[REDACTED]" (DX 4 p 17), even though he admitted that an individual who had been arrested by officers from the 113 Precinct had stated that [REDACTED] "had been staying at that house" (DX 4 p 16).

When his CCRB interviewer asked him whether "you went to the location because of [REDACTED] or because of [REDACTED]?" the Respondent answered, "During the course of investigating the apprehension of [REDACTED] we discovered a warrant for [REDACTED]" The Respondent then asserted, "During the course of one investigation, if I find elements of another crime, I'm obligated to investigate that crime

too. That crime being that he ([REDACTED]) was a wanted individual. So both crimes were being investigated " (DX 4 p. 27)

The Respondent's claim that the arrest warrant regarding [REDACTED] (DX 1) legally constituted "elements of" the "crime" of "being" a person who "was a wanted individual" is legally ludicrous. As to his claim that the 105 PDS was investigating [REDACTED]'s "crime" as well as [REDACTED]'s crimes, if the 105 PDS had actually been carrying a case regarding [REDACTED], the Respondent would have assigned it to a 105 PDS "case detective." Yet the Respondent admitted that with regard to the "case" against [REDACTED], "There is no one assigned to that case," although he had assigned "numerous detectives" to investigate [REDACTED]'s "numerous offenses " (DX 4 p. 17)

Based on the Respondent's answers to the questions posed to him at CCRB, his contention at his CCRB interview that he and a dozen members, the entire Squad from the 105 PDS, went to Thomson's house seeking to find and arrest a "[REDACTED]" for a Criminal Court arrest warrant issued on February 25, 1997 (DX 1), over a decade earlier, is not credible.

The Respondent's trial testimony

At this trial, the Respondent offered a completely different factual and legal basis to justify why he and his 105 PDS officers went to [REDACTED], on March 9, 2009, and how they were able to lawfully enter and search Thomson's residence.

Contrary to what he told CCRB, at this trial he testified that when he and his 105 PDS officers went to [REDACTED] on March 9, 2009, they were looking for [REDACTED]. With regard to the arrest warrant for "[REDACTED]" (DX 1) he

testified that as far as he knew there was no relationship whatsoever between [REDACTED]

[REDACTED] and [REDACTED]

Most significantly, in his trial testimony the Respondent asserted that at the time he entered the residence it was his belief that the officers who had knocked on the front door of Thomson's residence had obtained valid, voluntary consent to enter and search the residence. The Respondent further asserted that he had presumed that the occupants of [REDACTED] would consent to allowing his officers to enter. When the Respondent was asked, "Did you make the decision that the officers would enter the house on March 9th, 2009?" He answered, "I believed that would be a consensual entry. yes." The Respondent testified that he never asked any of his officers whether they had actually received consent to enter and search or who had provided that consent. He asserted that his belief that the officers who knocked on the front door had obtained consent to enter and search was based solely on the fact that when he entered the residence the scene appeared to be "calm" and none of occupants complained to him.

I can only conclude that the Respondent's consent search claim is a post-CCRB interview fabrication because, even though he was asked numerous questions at CCRB about the legal basis for the entry and search of Thomson's home, at no point during his CCRB interview (DX 4) did the Respondent raise the issue of consent much less assert that he believed that an occupant had consented to the entry and search.

Based on the above, I reject the Respondent's trial testimony that he genuinely believed that his detectives had obtained valid, voluntary consent to enter and search Thomson's home. The Respondent's claim at trial that he truly believed that the occupants of [REDACTED], had allowed to the officers to enter and were

cooperating with his officers stands in stark contrast to his statement to CCRB that he entered the residence with his firearm drawn (DX 4 p 19)

As the Respondent's counsel conceded during his closing argument, members assigned to the 105 PDS wanted [REDACTED] badly and even though, on March 9, 2009, all 12 detectives assigned to the 105 PDS were working on the investigation of [REDACTED], they had not developed sufficient information that [REDACTED] was inside [REDACTED] [REDACTED] to meet the legal threshold of establishing the reasonable cause they needed to apply for a search warrant which would permit them to lawfully forcibly enter and search [REDACTED]

Based on the record here, especially the inconsistent and incredible explanations regarding the legal basis for the entry and search that were offered by the Respondent at his CCRB interview and in his testimony at this trial, I can only conclude that rather than directing his detectives to take further investigative actions to establish reasonable cause that [REDACTED] was staying at [REDACTED], the Respondent decided to authorize his detectives to improperly forcibly enter [REDACTED] on March 9, 2009, under the pretext that they were there to arrest a '[REDACTED]' on a 12-year-old warrant for failure to appear in Criminal Court to answer a summons

The Respondent is found Guilty

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined See *Matter of Pell v Board of Education*, 34 N Y 2d 222 (1974)

The Respondent was appointed to the Department on April 25, 1990. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pleaded guilty and admitted that he wrongfully failed and neglected to properly maintain Department records in that he omitted to sign in present for duty and end of tour on the command roll call on 15 occasions, he omitted to sign out end of tour on the command roll call on 29 occasions, he omitted to sign in present for duty on the command roll call on nine occasions, and he wrongfully transported his "step kids" in an unmarked Department vehicle on one occasion.

The Respondent has been found guilty of abusing his authority by failing to conduct a proper investigation prior to authorizing the wrongful entry and search of [REDACTED] to arrest [REDACTED] who was named in an arrest warrant, in that he did not have reasonable cause to believe that [REDACTED] was inside [REDACTED] S [REDACTED] prior to authorizing the entry and search of the premises.

The Assistant Department Advocate (the Advocate) recommended as a penalty that the Respondent be required to forfeit 30 vacation days.³

In determining an appropriate proper penalty, the consequences of a Respondent's misconduct should be taken into consideration. Here, the Respondent's failure as a supervisor to conduct a proper investigation prior to authorizing the wrongful entry and search of Sonia Thomson's house resulted in an unjustified invasion of her and her son's right to privacy within their home, and Thomson and her son both were frightened when

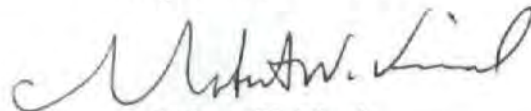
³ The Advocate also recommended that an additional 30 hours and 40 minutes be deducted from his time and leave balance regarding the misconduct charged in Specification No. 5 that the Respondent failed to submit UF-28s for lost time on 13 occasions for a total of 30 hours and 40 minutes. However, the Respondent has been found Not Guilty of Specification No. 5.

members under the Respondent's supervision, with firearms drawn, pushed open both the front door and the door to Thomson's bedroom and issued orders to each of them.

Also, the Respondent's clearly inconsistent testimonies regarding this serious police action raise questions about his judgment.

Therefore, it is recommended that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. It is further recommended that the Respondent forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials



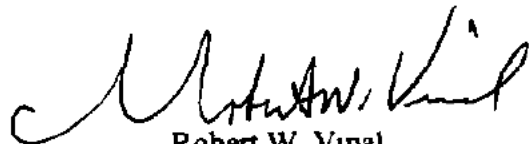
POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
LIEUTENANT MICHAEL MILTENBERG
TAX REGISTRY NO 896558
DISCIPLINARY CASE NOS 85690/09 & 2010-1037

The Respondent received an overall rating of 5.0 on his 2007 performance evaluation, 5.0 on his 2006 evaluation, and 5.0 on his 2005 evaluation. He has been awarded one Meritorious Police Duty - Integrity medal, one Exceptional Merit medal, two Meritorious Police Duty medals and six Excellent Police Duty medals. [REDACTED]

In 2001, he was required to forfeit ten vacation days after he was found guilty at trial of abusing his authority while on duty during an incident which took place in July, 1998.

For your consideration



Robert W. Vinal
Assistant Deputy Commissioner - Trials